THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.24794 of 1997

Dated 21-02-2007

Between:
Y.Shri Sitaramanjaneya Sharma.

..... PETITIONER

AND

The Chief General Manager/Appellate Authority, State Bank of Hyderabad, Head Office, Gungoundry, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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O R D E R:

Petitioner was issued a memo wherein two charges were levelled against him. The first charge contains four imputations of his having borrowed money from several persons including a Savings Bank Account holder. The second charge is that he had issued cheques without maintaining sufficient balance in his account.

With regards the first charge, Sri C.Raghu, learned counsel for the petitioner, would refer to the State Bank of Hyderabad (Officers') Service Regulations, 1979
(for short 'Officers' Service Regulations') whereunder Regulation 59(1) provides that no officer shall, in his individual capacity, borrow money from any person having dealings with the bank. With regards the second charge, learned counsel would submit that since the petitioner was not aware of the regulations in this regard, his ignorance cannot be treated as an act of misconduct. Learned counsel would further contend that on the date, on which, these acts of misconduct were said to have been committed, the petitioner was an award staff, and as such, no action could have been taken under the Officers' Service Regulations. Learned counsel would submit that, in any event, the petitioner could not have been denied his right of being considered for promotion to the post of Officer in Middle Management Grade Scale-II since the punishment imposed on him was a minor penalty, under regulation 67(b) of the Officers' Service Regulations, of withholding two increments without cumulative effect. Learned counsel would point out that since withholding of promotion is also a minor penalty under clause (c) of regulation 67 of

the Officers' Service Regulations, the action of the respondents in denying consideration of the case of the petitioner for promotion, would amount to imposition of two punishments, which is impermissible.

Insofar as the contention, with regards the applicability of regulation 59(1) of the Officers' Service Regulations is concerned, the prohibition is against borrowing money from a person having dealings with the bank. While Sri C.Raghu, learned counsel for the petitioner, would submit that, the mere fact that a person has a savings bank account would not bring the person within the fold of having dealings with the bank, I must express my inability to agree. Dealings with the bank does not necessarily mean borrowing amounts from the bank. Dealings can be in any form, whatsoever. A person, who has a savings bank account, would certainly have dealings with the bank. In any event, even if this charge does not amount to misconduct, since the second charge is held established, mere ignorance of the applicable regulations would not absolve the petitioner of the misconduct. The second charge must, at least, be held to have been established. As has been held in **State of Orissa v. Bidyabhushan Mohapatra**[1] and **Railway Board, New Delhi v. Niranjan Singh**[2]**,** even if some of the several charges are held established and the punishment imposed is one, which could have been imposed for the charge held established, even then, it is not for this Court to interfere with regards the nature and extent of punishment imposed. As such, even if it is assumed that the allegations levelled against the petitioner with respect to the first charge does not amount to misconduct, since the second charge is an act of misconduct, which is not disputed by the petitioner, no interference is called for with regards imposition of punishment of

stoppage of two increments without cumulative effect.

The contention of Sri C.Raghu, learned counsel for the petitioner, that since on the date of misconduct the petitioner was an award staff no action could have been taken against him under the Officers' Service Regulations, must also be rejected. It is well settled that the regulations which are applicable are those which prevail on the date action is proposed to be taken. It is not in dispute that, on the date on which the charge sheet was issued, the petitioner was an officer in Junior Management Grade Scale-I category, and as such, was covered by the Officers' Service Regulations. The action of the respondents in initiating disciplinary proceedings against him and imposing the punishment of stoppage of two increments without cumulative effect, in exercise of the powers conferred under the Officers' Service Regulations, cannot be faulted.

Now the question as to whether the petitioner could have been denied consideration of his case for promotion as Officer in Middle Management Grade Scale-II. In this context, a few dates have to be taken note of. The punishment was imposed on the petitioner vide proceedings dated 17-12-1996. The appeal preferred there against was dismissed on
23-05-1997. Selections to the post of Middle Management Grade Scale-II for the year 1997-98 were held on 16-09-1997. Since the punishment imposed on the petitioner was of withholding of two increments without cumulative effect, the rigour period of the punishment was two years from the date the order of punishment was passed i.e. from
12-12-1996 to 11-12-1998**.** It is not in dispute that it is during this rigour period that selections to the post of Middle Management Grade Scale-II were effected i.e. on 16-09-1997.

The contention of Sri C.Raghu, learned counsel for the petitioner, is that since clause (c) of regulation 67 of the Officers' Service Regulations prescribes withholding of promotion also as a punishment, and since the disciplinary authority has not chosen to impose such a punishment on him and has instead imposed the punishment of withholding of two increments without cumulative effect under clause (b) of regulation 67 of the Officers' Service Regulations, his case ought to have been considered for promotion, and that two punishments cannot be imposed for the very same act of misconduct.

It is true that withholding of two increments without cumulative effect is a minor penalty as specified under regulation 67 of the Officers' Service Regulations. It must, however, be noted that no exception can be taken to a person not being promoted for the reason that he suffered a penalty pursuant to disciplinary proceedings instituted against him. In this context, it is useful to refer to **Union of India v. K. Krishnan**[3], wherein the Supreme Court held thus:

"……..We have considered the matter closely and in our opinion the view taken by the Tribunal both in the impugned judgment and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. **There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a Government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the government servant concerned to double jeopardy. We do not find any merit in the argument that there is no justification or rationale behind the policy; nor do we see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of the**

punishment may justifiably be termed as self-contradictory. The impugned judgment is, therefore, set aside….."

Sri A.Krishnam Raju, learned standing counsel for the respondent-bank, would refer to the Memorandum of the Executive Committee, whereunder guidelines were issued prescribing a sealed cover vacancy procedure. Under clause (2) thereof, where disciplinary proceedings end with imposition of penalty of withholding of punishment for a specified period or withholding of increments or reduction to a lower stage in the time scale, the concerned officer will become eligible for promotion only after the expiry of the penalty.

In the present case, the petitioner has been imposed the penalty of withholding of two increments without cumulative effect. The period of two years expires only from the date, on which, the order of punishment was passed. Since, in the interregnum, the petitioner is not entitled, in view of the aforesaid guidelines, to have his case considered for promotion, the action of the respondents in denying consideration of his case for promotion in the selections held on 06-09-1997 for appointment to the post of Middle Management Grade Scale-II, cannot be faulted.

The Writ Petition fails and is accordingly dismissed. No costs.

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21-02-2007

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[1] AIR 1963 SC 779

[2] AIR 1969 SC 966

[3] AIR 1992 SC 1898